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STATUTES INVOLVED

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United States Constitution,
Fourteenth Amendment 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No._____

DENNIS THOMAS SATERIALE,
Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE DISTRICT COURT OF APPEAL 2nd APPELATE DISTRICT, STATE OF CALIFORNIA.

Comes now Dennis Thomas Sateriale and petitions this Honorable Court for a Writ of Certiorari directed to the District Court of Appeal, 2nd Appellate District, State of California and prays that a Writ of Certiorari issues to review the judgment of the District Court of Appeal, 2nd Appellate District, State of California entered in the above case. Decision rendered December 16, 1966. Petition for Hearing in the Supreme Court Denied February 7, 1967.

OPINIONS

The opinions below are attached hereto in Appendix A.

JURISDICTION

Jurisdiction is conferred by Title 28, Section 1257 United States Code and by the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved are set forth in Appendix B.

STATEMENT OF THE CASE

Petitioner was charged by information filed in the Superior Court of the County of Los Angeles, State of California, as follows:

Counts 1 and 11 charged the petitioner with violation of Section 11501 of the Health and Safety Code. sell, furnish and give away a narcotic, to wit: Heroin.

Counts I and II charged the petitioner with the sale of heroin on November 8, 1964 and December 2, 1964.

Count III charged the petitioner with violation of of Section 11531 of the Health and Safety Code: sell, furnish and give away a narcotic, to-wit; marijuana.

Count III charged the petitioner with the sale of marijuana on or about December 4, 1964. (C.T. 52-54)

Petitioner entered a plea of Not Guilty to the charges against him and personally waived trial by jury. (C.T. 56)

The Case was submitted on the testimony taken from the transcripts at the preliminary examination. Petitioner was found Guilty of Count I, all other counts dismissed (C.T. 64). probation denied, and he was sentenced to State prison for the term prescribed by law.

Petitioner filed a timely Notice of Appeal in propria persona (C.T. 65). stay of execution was granted, whereafter present counsel was substituted as his attorney of record on appeal.

In the Appellate Court the method of raising the federal question was presented in the Opening Brief on Appeal by assignment of errors. (Opening brief p. 8-10). In the Petition for Hearing in the Supreme Court of California (pp. 6-10).

QUESIONS PRESENTED

1. Whether the petitioner was entrapped as a matter of law.

Whether it is a violation of due process of law and equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States, prohibiting the imposition of cruel and unusual punishment, to deny a defendant known to be an addict the benefits of the State's Narcotics Rehabilitation program solely because the defendant was convicted of selling a substance weighing one ounce which contained 34% heroin.

REASONS WHY THE WRIT SHOULD BE GRANTED

On November 8, 1964 Jesse Lee Thomas, a known informer, was working under the directions of the Sheriff's Department of Los Angeles for the purpose of enticing petitioner Sateriale for a sale of narcotics. (R.T. 9) On December 7, 1964 Thomas again made contact with Sateriale for the purpose of having him purchase narcotics for him. (R.T. 10) At all times during these sales Thomas worked under the direction of Sgt. Landry and Deputy Faillet of the Los Angeles Sheriff's Department as an undercover agent and was paid by the Sherriff's department. (R.T. 35)

The money used for these sales, furnished by the Sheriff's Dept. would have been the best evidence.

There the record is silent. There is no evidence or testimony that petitioner ever received money from Thomas, or that the same money was ever recovered. This was strictly hearsay and no offer of evidence ever introduced to the contrary.

ENTRAPMENT, GENERAL THEORY OF DEFENSE

Among the methods of lawless law enforcement practiced by some public officials is that of implanting a criminal scheme in the mind of an otherwise innocent individual with a view to prosecuting the individual in consequence.

Clark & Marshall, *Law of Crimes* (3rd Ed.) 162

Entrapment is the conception and planning of an offense by an officer and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer.

Sorrells v. United States, 287 U.S. 435

The defense consists of two elements, to each of which the courts have given varying degrees of emphasis: (1) The origin of the criminal intent in the mind of the officer; (2) the inducement of the defendant by the officer. These elements are closely related. The fact that no inducement was used by the officer is evidence that the criminal intent originated in the mind of the defendant, and the fact that such inducement

was used in evidence that the criminal intent originated in the mind of the officer.

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Initiation of the intent plus preparation by the officer.

State v. McCornish (Utah), 201 P. 637

A narcotic addict is a mentally ill person. Emotional dependence on the drug is an integral and crucial part of the legal definition of the word "addict."

People v. De La O, 59 Cal. 2d 128
People v. Victor, 62 A.C. 290, 313

The California Legislature sought by the enactment of Section 6450, *et seq.,* to assist in rehabilitating narcotic addicts; punishment is secondary.

Section 6450, *et. seq.,* contained no provision that the quantity involved is a bar to rehabilitation treatment. There is no distinction between the addict-user-seller and the addict-user. It is common knowledge that many users acquire part of their income with which to purchase drugs for their own use by selling narcotics to other users. In appellant's case, the court did not dispute appellant's addiction or the danger of his becoming addicted. The court merely summarily denied rehabilitation treatment on the ground of quantity.

The Legislature assumed there would be cases where, for many reasons, a person would not be amenable to treatment. Thus a section was provided (now W. & I. Sec. 3053) whereby the Director of the rehabilitation center could return a person as not being amenable to treatement after an observation period of sixty days. The import of the legislation involved is to make every effort at rehabilitation.

Here, appellant was summarily denied the right and sentenced to prison as an addict. At the time of probation and sentence hearing, appellant requested that he be referred to Department 95 of the Superior Court. The court refused. Appellant then requested a referral under the provisions of Section 1203.03 of the Penal Code, due to appellant's age. The court refused and stated "They won't take it under 1203.03 under these conditions. The amounts of heroin here involved were too great for any consideration." (R. T. 10, lines 8-10)

Where the trial court has erroneously refused to exercise the discretion conferred by 6451 because of a misapprehension as to the petitioner's eligibility for the program, the case will be remanded to permit the exercise of such discretion.

People v. Ortiz (1964) 61 Cal. 2nd 249, 252-256
People v. Jolke, 242 A.C.A. 125, 136

The objective of the program is an all out attempt to rehabilitate young and old alike to correct their

lives and return them to society. As a drug addict, if petitioner is deprived of this right, he will be thrown in a state prison as an addict, where no facilities are available to him.

CONCLUSION

For the reasons set forth above we pray that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

JEREMIAH CASSELMAN,
Attorney for Petitioner

APPENDIX "A"

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent,	)	
v.	)	Crim.
DENNIS THOMAS SATERIALE, Defendant and Appellant.	)	No. 11595

[Filed Dec. 16, 1966, Court of Appeal - Second Dist., Clayton Robbins, Jr., Clerk].

APPEAL from a judgment of the Superior Court of Los Angeles County. J. Howard Ziemann, Judge. Affirmed.

Adlen & Casselman and Jeremiah Casselman for Defendant and Appellant.

Thomas C. Lynch, Attorney General, Edward P. O'Brien and Gloria F. DeHart, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant was charged with three counts: Count I—sale of heroin on November 8, 1964 (Health & Saf. Code, §11501); count II—sale of heroin on December 2, 1964; count III—sale of marijuana on December 14, 1964 (Health & Saf. Code, §11531):

By stipulation, trial by jury was waived and the case was submitted to the court on the preliminary transcript. The court found defendant guilty on count I, and dismissed the other two counts "in the interests of justice." Defendant was sentenced to state prison. He appeals from the judgment.

Jesse Lee Thomas, who was employed by Deputy Sheriff Landry as an undercover man, testified that on November 8, 1964, he paid defendant $300 and recieved a package of white powder. On December 2 he again met defendant and gave him $300 for another package. On December 14 he met defendant and gave him $500 for a bag of marijuana. It was stipulated that a forensic chemist would testify that the first package contained 1 ounce of powder, 34 percent heroin; the second package contained 18 grams of 30 percent heroin, and the third bag contained about 10 pounds of marijuana.

Deputy Landry, who had searched Thomas prior to each meeting with defendant, and who had kept Thomas under surveillance most of the time, corroborated Thomas' testimony in substantial respects.

No evidence was offered on behalf of defendant.

There is no merit in defendant's argument here that he was entrapped. There is no entrapment in the legal sense when the intent to commit the crime originates in the mind of the defendant and the police do no more than give him an opportunity to prove his crim-

inal predisposition. (*People v. Braddock*, 41 Cal. 2d 794, 802.)

Neither is there any merit in defendant's contention that the trial court abused its discretion in refusing to adjourn the criminal action so that civil proceedings could be instituted under the narcotics rehabilitation law. When defendant was arraigned for judgment, the record shows this:

> "MR. WEISS: Counsel merely states we believe the [probation] report is a thoroughly complete one. The only question left open in counsel's mind is whether a referral to 95 should still be made. In view of the usage here, I think that should be explored, and no damage could be done either to society or the defendant, and let them reject or accept him.
>
> "THE COURT: It would just be wasting 95's time under the conditions of this case."

We assume that "95" referred to department 95 of the superior court where civil commitment proceedings are heard.

Defendant's trial attorney did not dispute any of the information in the probation report regarding the defendant's pattern of criminality, nor did he suggest that there were any mitigating circumstances. Here defendant's brief asks us to hold that the trial court abused its discretion. At the request of the Attorney General we have augmented the record by including

the probation report so that defendant might have a meaningful review.

This report shows, among other things, that defendant at age 24, had the following record:

1958 and 1959 — involvement with the police as a juvenile.

1960 — three arrests on traffic offenses; one additional arrest on a traffic warrant.

1961 — three arrests for traffic offenses, one of which was for driving with a suspended license. One more arrest on a traffic warrant.

1961 — sentenced to jail for obtaining a driver's license under a fictitious name.

1961 — fined for disorderly conduct and drunk in auto.

March 15, 1962 — found guilty of grand theft and committed to the Youth Authority. At this time defendant was a member of the "Hell's Angels" motorcycle group.

June 1963 — pleaded guilty of burglary.

October 1963 — pleaded guilty of possession of dangerous drugs and sentenced to jail.

November 1963 — sentenced to jail for parole violation.

January 1964 — sentenced to six months' jail for grand theft.

August 1964 — arrested for petty theft, of which he was convicted in January 1965.

Defendant's employment was negligible. He had relied on his family for support, until he became a seller of narcotics. The sales in November and December 1964 were of substantial quantities, indicating that he was not the typical addict-peddler. Defendant told the probation officer he had been a user, but that he had "kicked the habit" while in jail. The probation officer advised that in his opinion defendant would not be a good subject for the narcotic rehabilitation program because of the nature and extent of his criminal activities.

Penal Code section 6451 (now Welf. & Inst. Code, § 3051) provides that if it appears that the convicted person is addicted or in imminent danger, the court shall institute civil proceedings "unless in the opinion of the judge the defendant's record and probation report indicates such a pattern of criminality that he does not constitute a fit subject for commitment under this section."

The information before the trial judge indicated a pattern of criminality, irresponsibility and indifference to the requirements and sanctions of the penal law. For his past offenses defendant had had the benefit of minimum sentences, Youth Authority training, probation and parole. His response was to progress to more serious offenses. The narcotic rehabilitation program requires in the subject a certain amount of cooperation and some capacity for accepting responsibil-

ity. It was not an abuse of discretion for the trial court to find that defendant was unfit.

The judgment is affirmed.

FILES, P.J.

We concur:

JEFFERSON, J.
KINGSLEY, J.

APPENDIX "B"

CONSTITUTIONAL PROVISIONS AND STATUTS

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT.

Section 1. All persons born or naturalized in the United States, and Subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its

being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commision held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

CERTIORARI DENIED